

# OCCUPATIONAL REGULATION 101

Occupational regulation refers to a regulatory intervention applied to an occupation which balances individual economic opportunity with ensuring public health and safety. The regulation of an occupation can occur through government or non-governmental interventions at varying levels.<sup>1</sup> The regulatory options for an occupation are broad and vary from non-regulation (market competition) to licensure (the most restrictive form of regulation which protects occupational title and scope of practice).

In 1889, the U.S. Supreme Court ruled that it was within a state's right to regulate health care professionals to ensure the welfare of the people and protect them from impaired or incompetent professionals.<sup>2</sup> Since that time, states have grappled with finding appropriate levels of regulation for occupations that protect "the public's health and safety by increasing the quality of professional's services through mandatory entry requirements, such as education."<sup>3</sup> While occupational regulation occurs in many sectors, health care occupations experience a greater prevalence of certification or licensure as compared to other sectors.<sup>4, 5</sup>

Unfortunately, variations in terminology make defining and comparing regulatory schema within and across states difficult. For the purposes of this report, the following definitions will be utilized to describe varying levels of regulation (Note: only the most frequent regulatory options for health care occupations are described in this report). Additional regulatory options exist and may be found at: [http://ij.org/wp-content/uploads/2017/11/Invert-ed-Pyramid\\_FINAL\\_cover.pdf](http://ij.org/wp-content/uploads/2017/11/Invert-ed-Pyramid_FINAL_cover.pdf)).

## LICENSE

A form of **state governmental regulation** that **restricts the title and practice of an occupation** to only those individuals who receive licensure. Licensed individuals are held accountable by a state-appointed regulatory body to meet established standards. **"The main rationales for occupational licensing are to protect the health and safety of consumers and to ensure a sufficiently high level of service quality."**<sup>6</sup> Licensing has been upheld as a mechanism for administering and enforcing standards among the health professionals within a state. Licensing defines the educational and experiential requirements for entry into the profession and outlines the scope of services/practice associated with professional practice.

"Licensure is considered the most appropriate form of regulation when four conditions are present:

- There is sufficient potential harm to the public to justify state restricted entry,
- When practitioners are highly independent and cannot be closely supervised,
- When the scope of practice can be clearly and succinctly defined enough so that its action are easily distinguishable from those of other regulated professions, and
- When the acts constituting the scope of practice are not predominantly functions that are generally considered part of the public domain."<sup>7</sup>

**Current examples of Indiana health occupations that fall under this level of regulation:** Physicians, nurses, dentists, dental hygienists, etc.

1. Ross JK. (2017). The Inverted Pyramid: 10 Less Restrictive Alternatives to Occupational Licensing

2. Dent v. West Virginia, 129 U.S. 114, 122 (1889).

3. Cox C, Foster S. (1990). The Costs and Benefits of Occupational Regulation. Available at: [https://www.ftc.gov/system/files/documents/reports/costs-benefits-occupation-al-regulation/cox\\_foster\\_-\\_occupational\\_licensing.pdf](https://www.ftc.gov/system/files/documents/reports/costs-benefits-occupation-al-regulation/cox_foster_-_occupational_licensing.pdf)

4. Department of Labor, Bureau of Labor Statistics. (2017). Household Data, Annual Averages, Certification and licensing status of the employed by occupation, 2017 annual averages. Available from: <https://www.bls.gov/cps/cpsaat53.pdf>

5. Note: the Department of Labor defines the categories of "certification" vs. "licensure" as: "Certifications are issued by a non-governmental certification body and convey that an individual has the knowledge or skill to perform a specific job. A license is awarded by a government agency and conveys a legal authority to work in an occupation." per <https://www.bls.gov/cps/cpsaat53.pdf>

6. Kleiner MK. (2015). Reforming Occupational Licensing Policies. Available at: [https://www.brookings.edu/wp-content/uploads/2016/06/THP\\_KleinerDiscPaper\\_final.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/THP_KleinerDiscPaper_final.pdf)

7. Nebraska Credentialing Review Program. Available at: <http://dhhs.ne.gov/publichealth/licensure/documents/LevelsOfStateRegulation.pdf>

## CERTIFICATION

Certifications are always voluntary and are not required to engage in practice. However, only an individual receiving a certification may use the title of “Certified [occupation title].” Certification is frequently utilized in one of two forms: state certification and industry certification. These certification options are described below:

### STATE CERTIFICATION

A form of **state governmental regulation** that **restricts the title of an occupation but not the practice**. State certification is voluntary for individuals to engage in practice associated with this occupation. However, only a state certified practitioner may use the title of “certified” practitioner. This form of regulation is generally appropriate when:<sup>1</sup>

- There is some level of potential harm to the public (although less serious than the potential harm which results in licensure, as if an individual’s state certification is revoked, he/she would not lose practice privileges).
- The employer is able to make an informed choice of employee/provider based on certification status. In general, health sector employers are aware of the value of a state certification and set employment standards based on certain credentials.

**Current examples of Indiana health occupations that fall under this level of regulation:** Certified Nurse Aides (CNA), Certified Dietitians, etc. For example, in Indiana, an individual is permitted to perform the duties of a nurse aide without certification. However, in order to use the title of “Certified” Nurse Aide, an individual must meet state requirements.

### INDUSTRY CERTIFICATION:

A form of **non-governmental** regulation in which a non-governmental entity offers certification based on education, experience, and/or membership. “Industry” certification is a regulatory option where credentials are driven by the skill needs within an industry/group of employers.

**Current examples of Indiana health occupations that fall under this level of regulation:** Certified Medical Assistants, Certified Phlebotomy Technicians, etc.

### NOTE

Industry certifications may be used in combination with another form of regulation, such as the case of physicians in Indiana.

While Indiana physicians receive a medical license from the state, they generally also maintain the board certifications associated with their specialty (industry), which are valued by their employer or contracting organization.

## REGISTRATION

A form of **governmental** regulation where an individual has to simply notify the government of their name, address, and services provided before they can work. This creates a list of individuals that provide certain services, but does not require the individual provide any type of proof of training/credentials in order to be on the list.

**Current examples of Indiana occupations that fall under this level of regulation (no health-related occupations are currently regulated through registration in Indiana):** registered interior designers

In addition to occupational regulation, health practitioners frequently practice under other types of regulatory policy. For example, physician assistants (licensed) generally work under the supervision of a physician (licensed) and may practice in acute care hospitals (nationally-accredited) which are state-regulated (facility license).

### NOTE

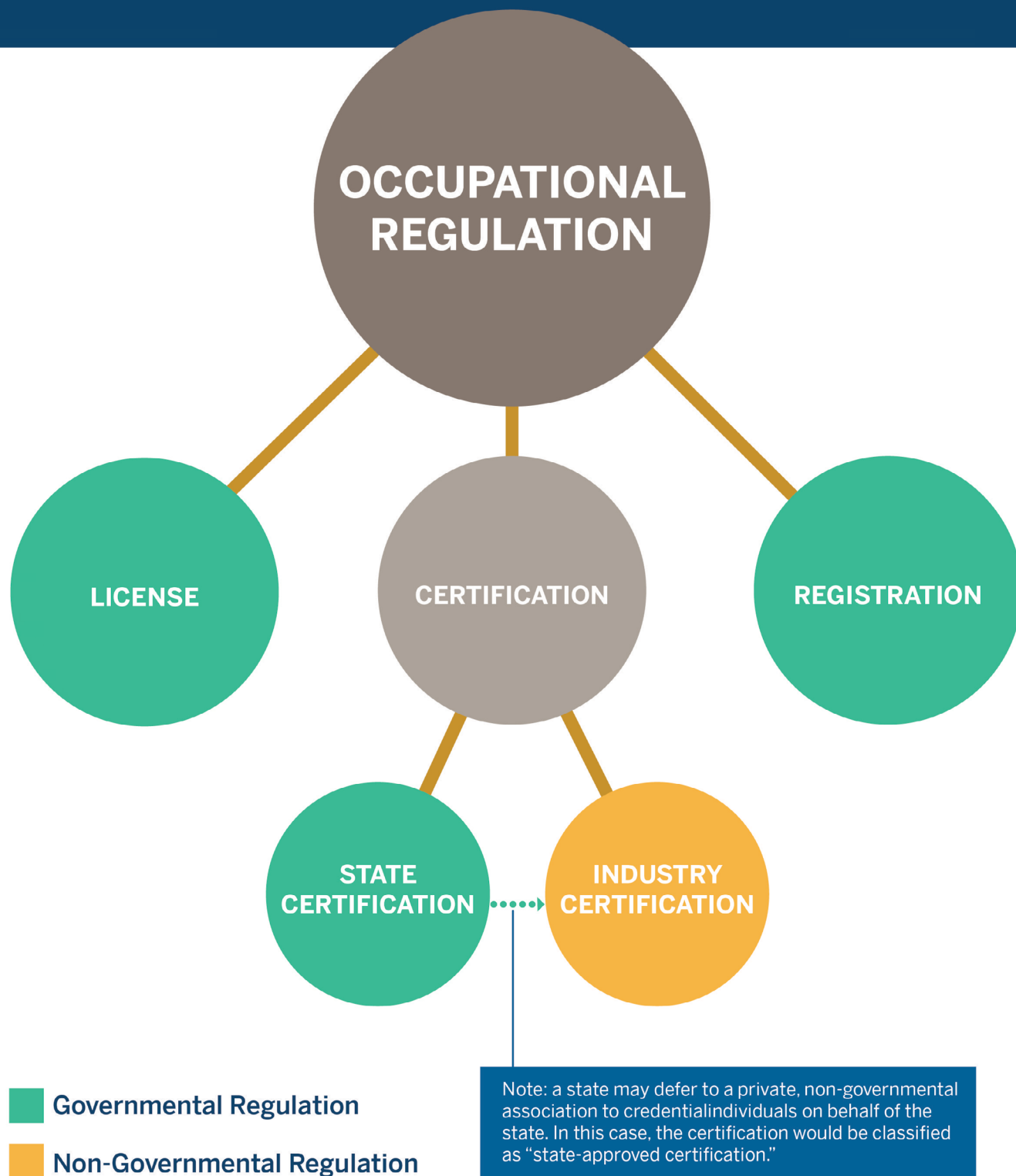
A state may defer to a private, non-governmental association to credential individuals on behalf of the state. In this case, the certification would be classified as “state-approved certification.”

## REGISTRATION VS. REGISTRY

“**Registration**” is not synonymous with “**registry**.” “Registration” is a level of occupational regulation that simply requires individuals engaging in a certain practice (or providing certain services) to maintain their name on a list. In contrast, a “registry” refers to a list of individuals.

Many levels of regulation require that a registry be maintained for individuals. For example, physicians, while regulated at the level of “licensure” are also added to the Indiana Professional Licensing Agency’s (IPLA) “Search and Verify” feature, where their information is maintained on a registry of active physicians. Also, Certified Nurse Aides are regulated at the level of “state certification” (by the Indiana State Department of Health), but a list or “registry” of active CNAs are administratively maintained by the IPLA.

# REGULATORY OPTIONS FOR OCCUPATIONS



## **QUESTIONS?**

For inquiries or feedback on this report, please email the Bowen Center for Health Workforce Research and Policy at [bowenctr@iu.edu](mailto:bowenctr@iu.edu)

### **AUTHORED BY:**

Hannah L. Maxey, Director

Courtney Medlock, Health Policy Analyst

### **WITH CONTRIBUTIONS BY:**

Devan Ganon